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General Accounting Office  
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**Office of the General Counsel**

B-279346

March 11, 1998

The Honorable Alfonse M. D'Amato  
Chairman  
The Honorable Paul S. Sarbanes  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Securities and Exchange Commission: Offshore Offers and Sales

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC), entitled "Offshore Offers and Sales" (RIN: 3235-AG34). We received the rule on February 18, 1998. It was published in the Federal Register as a final rule on February 25, 1998. 63 Fed. Reg. 9632.

The final rule amends the Regulation S (issuer safe harbor for offshore offerings of domestic securities) to address fraudulent and manipulative practices that have developed, particularly with respect to thinly capitalized companies.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO

evaluation work relating to the Securities and Exchange Commission is Thomas McCool, Director, Financial Institutions and Markets Issues. Mr. McCool can be reached at (202) 512-8678.

Robert P. Murphy  
General Counsel

Enclosure

cc: The Honorable Jonathan G. Katz  
Secretary, Securities and Exchange  
Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
"OFFSHORE OFFERS AND SALES"  
(RIN: 3235-AG34)

(i) Cost-benefit analysis

The "cost-benefit analysis" contained in the preamble to the rule appears to be the result of the SEC's consideration of the impact on competition as required under the Securities Exchange Act of 1934. According to the SEC in its report to us, there is no requirement that it perform a specific cost-benefit analysis of a rule, although pursuant to the Exchange Act, it is directed to consider the impact that any rule would have on competition. In this respect, the SEC believes that it is quite probable that the rule will increase the cost of raising capital for the domestic firms affected because of the increased holding period for these securities before they can be resold in the U.S. marketplace. While this may require the issuers to reduce the selling price to induce offshore investors, it is not likely that the costs will be significantly higher for individual industries or result in higher prices for domestic purchasers. Nonetheless, although the foregoing can theoretically place domestic issuers at a competitive disadvantage when raising funds through Regulation S transactions, the SEC notes that the fraudulent and manipulative schemes primarily involve domestic companies, making the restrictions imposed by the rule necessary to deter those abuses. The SEC believes that the rule will protect investors and enhance confidence in the integrity of the securities markets affected.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The SEC prepared an Initial Regulatory Flexibility Analysis in connection with the proposed rule, which was summarized in the notice of proposed rulemaking and was available to the public in its entirety. No comments were received that were specifically directed to the analysis.

The preamble to the rule contains the Final Regulatory Flexibility Analysis which describes the reason for the rule and the legal basis for it. The analysis contains the description and estimates of the number of small entities affected by the rule; a discussion of the recordkeeping, reporting and other compliance requirements; and the steps taken or considered to minimize the effect on small entities and the alternatives considered.

The SEC estimates that approximately 160 Exchange Act reporting companies would meet the definition of small business, although it notes that it does not have any long-term data that would enable it to develop precise estimates of the number of small businesses that may actually be affected by the rule.

Regarding the steps taken to minimize the burden, the SEC concludes that different requirements for small businesses and large businesses would be inconsistent with its objective of curbing abusive practices under Regulation S. The SEC also notes that the adoption of performance standards would be inconsistent with its statutory mandate to require full and fair disclosure of material information to investors.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained in 5 U.S.C. § 553.

On February 28, 1997, the SEC published a notice of Proposed Rulemaking in the Federal Register. 62 Fed. Reg. 9258. The SEC received 59 comment letters (including 12 received by email). The SEC discusses the comments received and the changes made to the proposed rule based on those comments in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Following a review by OMB of the SEC's submission required by the act, OMB has approved the information requirements as complying with the act and has issued control numbers for the documents.

Statutory authorization for the rule

The final rule is issued pursuant to the Securities Act, 15 U.S.C. §§ 77b(a)(11), 77d, 77e, 77s, 78c(b), 78d-1, 78l, 78m, 78o, and 78v.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.